

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 14-2404
	:	
	:	
LAW-DEN NURSING HOME, INC.,	:	
	:	
Respondent.	:	
	:	

**NATIONAL LABOR RELATIONS BOARD’S
MOTION FOR REFERENCE TO A SPECIAL MASTER**

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth Circuit:

The National Labor Relations Board (the “Board”), respectfully moves this Court to refer this civil contempt proceeding to a Special Master for hearing and report. In support of this motion, the Board shows as follows:

1. On February 1, 2017, the Board filed with this Court a Petition for Adjudication in Civil Contempt (“Contempt Petition”), against Law-Den Nursing Home, Inc. (“Law-Den” or “Respondent”). The allegations against Respondent include its failure to provide SEIU Healthcare Michigan (“the Union”) with information specifically required by the Judgment of this Court entered on March 17, 2015, and further violating the Judgment by repeatedly ignoring subsequent requests by the Union for relevant information which is necessary for bargaining; unilaterally instituting a wage increase; failing to meet for bargaining with the Union for extended periods of time; and by unlawfully setting conditions for its return to the bargaining table.

2. On or about February 8, 2017, and in more detail on April 11, 2017, Respondent submitted its Responses to Petition of the National Labor Relations Board for Adjudication in Civil Contempt, in which it generally denied the allegations of contumacious conduct and asserted that its compliance since October 18, 2016 should preclude a finding of contempt.¹

3. The factual disputes presented by the Board's Contempt Petition and by Respondent's Answer warrant referral of this case to an appropriate fact-finder, such as a United States magistrate or a United States district court judge, to serve as a Special Master.

WHEREFORE, for the foregoing reasons, the Board respectfully requests that this matter be referred to a Special Master for resolution of the disputed material facts and issues of law concerning this matter. A proposed order is submitted herewith.

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

/s/ Sarah Posner

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¹ Although Respondent is in bankruptcy, the Board's current contempt proceedings are not stayed by the filing of the Debtor's bankruptcy petition, as such proceedings fall under the "police powers exception" to the "automatic stay" provisions of Section 362 of the Bankruptcy Code (see 11 U.S.C. §362(b)(4)). NLRB v. Continental Hagen Corp., 932 F.2d 828, 832-33, 834 (9th Cir. 1991) 6 F.3d 951, 957 (2^d Cir. 1993); NLRB v. P*I*E Nationwide, Inc., 923 F.2d 506, 512 (7th Cir. 1991); NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934, 941 & n. 6 (6th Cir. 1986) (adopting tests set forth in re Wellham, 53 B.R. 195 (Bankr. M.D. Tenn. 1985)); In re Commerce Oil Co., 847 F.2d 291, 294-295 (6th Cir. 1988); Ahrens Aircraft, Inc. v. NLRB, 703 F.2d 23, 24 (1st Cir. 1993); In re S.T.R. Corp., 66 B.R. 49, 51-52 (Bankr. N.D. Ohio 1986).

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Contempt, Compliance and Special Litigation Branch
1015 Half Street, S.E.
Washington, D.C. 20003

Dated at Washington, D.C.,
this 17th day of April, 2017.

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2017, I electronically filed the foregoing documents with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that the foregoing document will be served on all parties or their counsel of record through the appellate CM/ECF system.

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ORDER OF REFERENCE TO A SPECIAL MASTER

Upon consideration of the National Labor Relations Board’s Petition for Adjudication in Civil Contempt, the Responses to Petition of the National Labor Relations Board for Adjudication in Civil Contempt, and the National Labor Relations Board’s Motion for Reference to a Special Master, it is hereby

ORDERED that Honorable _____ is appointed Special Master in this case to preside over discovery, take testimony, hear evidence, make appropriate submissions concerning this matter, and make a report and recommendation on the proper disposition of the Board’s petition for an adjudication in civil contempt

IT IS FURTHER ORDERED that the Clerk of this Court shall forthwith furnish the Special Master with a certified copy of this order, the above-referenced petition and response, and any items in the Court’s files that the Special Master requires.

IT IS FURTHER ORDERED that the Special Master shall have the following authority, powers, and duties:

(a) To entertain and dispose of all pretrial motions and conduct any pretrial proceedings that may aid in the disposition of the reference. These proceedings and motions may include, but are not limited to, those related to discovery, the possibility of obtaining admissions of fact and documents, motions for summary judgment, and amendment and supplementation of pleadings, in accordance with the pertinent provisions of the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

(b) To hold such hearings as may be reasonably necessary to obtain oral or documentary evidence from witnesses made available by the parties, or under the compelling process of the Special Master. Such hearings may be held at such places as the Master may deem appropriate.

(c) To engage a qualified reporter to take and transcribe the testimony adduced at such hearings. Pending further order of the Court with respect to taxation and assessment of costs, the reporter's charges, when duly billed for, shall be borne equally by the parties.

(d) To regulate all proceedings in the hearings before the Special Master in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence and to do all acts and take all measures necessary or proper for the Special Master's duties under this order. The Special Master may require the production of admissible evidence upon all matters relevant and material to the issues, including the production of all books, papers, vouchers, documents, and writings. Upon request of the parties, the Special Master may issue subpoenas for witnesses, who shall be paid witness fees and mileage pursuant to the law

applicable to witnesses in the Courts of the United States. If, without adequate excuse, a witness fails to appear or give evidence, the master may punish that witness for contempt. The Special Master may rule upon the admissibility of evidence, subject to review by this Court upon the Special Master's report. The Special Master may put witnesses on oath and may examine them. At the request of either party, the Special Master shall make a record of evidence offered and excluded, for review by the Court upon the Special Master's report.

(e) The Special Master may conduct the hearings with the design and purpose of keeping the inquiries within reasonable bounds confined to the controlling issues in this case. The Special Master shall take and report the evidence in full, unless it appears that the evidence is not admissible on any ground or that the witness is privileged. If the Special Master sustains an objection to a question propounded to a witness, the examining attorney may make a specific offer of what s/he expects to provide by the answer of the witness. The Special Master may add a statement to the record to clarify the character of the evidence, the form in which it was offered, the objection made, and the rulings thereon.

(f) As soon after the conclusion of the hearing as practicable, the Special Master shall file with the Clerk of the Court the transcript of the proceedings and of the evidence and the original exhibits, together with the Special Master's report thereon and recommendations as to findings of fact and conclusions of law; a copy of said report and recommendations shall at the same time be served on the parties. The Special Master may require the parties to submit, prior to the

filing of this report, proposed findings, objections to proposed findings, and briefs, and

IT IS FURTHER ORDERED that final assessment and allocations of all costs, fees, and expenses involved, including counsel fees, are reserved for further order of the Court. The Clerk shall mail to all parties notice of the filing of the Special Master's report and recommendations. Either side may file written objections to the Special Master's report and recommendations, but the objections must be filed with the Court and served upon the other side and the Special Master within thirty (30) days after notice of the report. If only one side files objections to the Special Master's report, that side shall serve and file its brief in support of its objections within sixty (60) days after notice of the Special Master's report. If both sides file objections, then the Board shall serve and file the opening brief within the same period of time. The answering brief is due thirty (30) days after the filing of the opening brief, and a reply brief may be filed within ten (10) days after the filing of the answering brief. The Court will then consider any requests for oral argument.

Dated this ____ day of _____, 2017

CIRCUIT COURT JUDGE

CIRCUIT COURT JUDGE

CIRCUIT COURT JUDGE